

¹ 20 C.F.R. § 501.3(d) (time for filing); *see also* 20 C.F.R. § 501.10(d)(2) (computation of time).

FACTUAL HISTORY

On March 19, 2002 appellant, then a 53-year-old rural mail carrier, filed a traumatic injury claim alleging that, on March 12, 2002, while in the performance of duty, he was involved in a motor vehicle accident and sustained a broken back. The employing establishment controverted the claim. By letters dated May 21, 2002, the Office accepted appellant's claim for a vertebral body fracture and for concussion with no loss of consciousness, and authorized x-rays, magnetic resonance imaging, braces/splints, myelogram, computerized axial tomography scan and orthopedic neurological referral. As per the instructions of Dr. Raymond V. Harron, appellant's treating osteopath, appellant returned to work, limited duty, on June 3, 2002. Appellant worked 3.5 hours a day from June 3 to 14, 2002. Appellant was paid partial disability compensation for that period.

On September 4, 2002 Dr. Harron increased the hours appellant was allowed to work to six hours a day. In an attending physician's report dated September 6, 2002, Dr. Harron indicated that appellant was partially disabled from May 28, 2002 until the present time. He indicated that appellant may continue his current work duties at six hours a day.

On October 2, 2002 appellant filed, *inter alia*, a claim for compensation for disability for the period August 3 to 16, 2002. By letter dated October 15, 2002, the Office requested that appellant submit further information.

On October 21, 2002 appellant filed a claim for compensation for partial disability for the period September 28 to October 11, 2002. The Office asked that appellant submit medical evidence in support of this claim by letter dated November 13, 2002.

On November 6, 2002 Dr. Harron indicated that appellant returned to limited duty on May 18, 2002. He further indicated that he reevaluated appellant on November 4, 2002 and released him to return to his regular work activities with no restrictions.

On November 8, 2002 appellant filed a claim for compensation for partial disability for the period October 12 through 25, 2002. By letter dated December 5, 2002, the Office requested that appellant submit further medical information.

By multiple decisions dated November 27, 2002, the Office denied appellant's claim for compensation for various periods from June 15 through September 27, 2002. By decision dated December 13, 2002, the Office denied appellant's claim for compensation for the period August 3 to 16, 2002. By decision dated January 9, 2003, the Office denied appellant's claim for compensation for the period October 12 to 25, 2002.

On January 17, 2003 the Office received notes from appellant's physical therapist dated from September 10 to October 18, 2002.

By decision dated February 7, 2003, the Office denied appellant's claim for compensation from September 28 to October 11, 2002.

By letter dated June 10, 2003, appellant requested review of the written record.

By decision dated August 20, 2003, the Office's Branch of Hearings and Review, denied appellant's request for review of the written record as it was not timely filed. The Branch of Hearings and Review also reviewed appellant's request under its discretion and determined that the request was further denied for the reason that the case could equally well be addressed by requesting reconsideration and submitting evidence that had not been previously submitted.

LEGAL PRECEDENT -- ISSUE 1

It is well established that once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment. Thus, the burden of proof is on the Office, rather than the employee with respect to the period subsequent to the date when compensation is terminated or modified.²

ANALYSIS -- ISSUE 1

In this case, the Office accepted that appellant sustained a vertebral body fracture and concussion as a result of the work-related injury. Although appellant returned to limited-duty work on June 3, 2002, the Office paid appellant compensation for the period June 3 through 14, 2002. On September 4, 2002 Dr. Harron increased the amount of hours that appellant was able to work from four to six hours. However, he did not opine that appellant's disability had ceased. In fact, no physician in the record opined that appellant no longer had any residuals from the accepted injury until November 4, 2002, when Dr. Harron released appellant to return to work without restrictions. As the Office paid compensation from June 3 to 14, 2002, it had the burden of proof to establish that appellant's disability causally related to his accepted employment injury had ceased. Accordingly, the Office improperly denied appellant's claim for compensation benefits from August 3 through 16, 2002 and from September 28 through October 25, 2002 without medical evidence that appellant's disability had ceased.

CONCLUSION

The Board finds that the Office improperly terminated appellant compensation, and hereby reverses the Office's finding that appellant was not entitled to compensation for the periods August 3 through 16, 2002 and September 28 to October 25, 2002. The Board remands this case for a determination as to the appropriate amount of compensation to be paid. In light of the Board's disposition of this issue, the issue of whether the Office properly denied appellant's request for review of the written record is moot.

² *Eddie Franklin*, 51 ECAB 223, 226 (1999); *Craig M. Crenshaw, Jr.*, 40 ECAB 919, 922 (1989); *Edwin L. Lester*, 34 ECAB 1807 (1983).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 13, 2002 and January 9, February 7 and August 20, 2003 are hereby reversed in part, and this case is remanded for further consideration consistent with this opinion.

Issued: June 2, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member